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2  
3 Pauline Horvath, Plaintiff  
3544 Custer St., #3  
4 Oakland, CA 94601  
510-532-3680

5 PLAINTIFF, PRO SE

C 07-04952 JSW

6 V.

Plaintiff's Opposition to  
Defendant's Motion to  
Dismiss

7  
8 DR. DONALD C. WINTER,  
9 Defendant,  
-----/

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
13

14 Defendant's Motion to Dismiss relies on Three Arguments:

15 (1) Because Plaintiff was knowledgeable of requirements for  
16 timely counselor contact but did not file an EEO complaint after  
17 several non-selections between the period of 1986 and 1991, that  
18 she was untimely in this blacklist complaint.

19 This argument fails as Defendant does not explain how it would  
20 have been possible for Plaintiff to file EEO complaints during  
21 the 1986 through 1991 period for non-selections, when she was  
22 not informed until 1998, she had been blacklisted and that was  
23 the reason for her earlier non-promotions.

24 Plaintiff's blacklisting complaint is timely because she "would  
25 not have known of the existence of a possible claim within the

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1 limitation period." Normally an EEO complaint for non-selection  
2 would have to be filed within 45 days of an applicant not being  
3 selected. However, during the period Plaintiff applied for  
4 several promotions, between 1986 and 1991, she was unaware that  
5 a blacklist with her name on it had been circulated and discussed  
6 among managers whom she applied to for promotions. She was not  
7 aware that these actions had taken place until 1998, at which  
8 time she filed. Plaintiff had no knowledge of the Navy's  
9 blacklisting documents and how her being blacklisted, resulted  
10 in her own non-selections, while she was applying for  
11 promotions.

12 Defendant incorrectly characterizes Plaintiff's EEO history in  
13 his Motion to Dismiss. Pg. 3, lines 7-8 states, "At various  
14 times since 1986, Plaintiff has made EEO complaints against her  
15 former employer" and pg. 9, lines 13 through 15 state  
16 "...Plaintiff failed to timely exhaust her administrative  
17 remedies in that she failed to contact an EEO Counselor in a  
18 timely manner. Plaintiff's failure to do so is inexcusable in  
19 light of her long history of EEO complaints and litigation."  
20 The EEO complaints Defendant alludes to, took place after 1992  
21 and the period in which Plaintiff could have filed non-selection  
22 complaints, ended in 1991.

23 Plaintiff having filed one single, informal EEO complaint in  
24 1986, which she never filed formal and which she believed had  
25 settled amicably, is inconsistent with Defendant's above

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1 characterization of Plaintiff having a long history of EEO  
2 complaints at the end of 1991. It is not a sufficient argument  
3 to show Plaintiff should have been aware during those years, that  
4 she had been retaliated against, when she was not promoted.  
5 Plaintiff is incorrectly characterized since she filed no  
6 complaints between 1986 and 1992.

7 Plaintiff's complaint, is being blacklisted. One of the results  
8 of this action, was Plaintiff's not being promoted during the  
9 years 1986 and 1991. Not being selected for a promotion is one of  
10 the most concrete, measurable harms suffered by being  
11 blacklisted, but there are numerous other tangible and  
12 intangible harms as a result of blacklisting.

13 Plaintiff was timely in filing this complaint as she had no  
14 awareness she was not being promoted due to retaliation, until  
15 she learned not being promoted was a direct result of being  
16 blacklisted.

17 (2) The Second Argument Defendant relies on in his Motion to  
18 Dismiss is the 1999 order issued by Judge Patel.

19 The first time Plaintiff filed a formal complaint was in 1992  
20 and this Court entered judgement in Plaintiff's favor, for that  
21 complaint, in 1997. Neither the 1992 complaint nor any of the  
22 following related complaints, that stemmed from the first one,  
23 had any mention of or relation to blacklisting. Plaintiff's  
24 complaints Defendant describes were filed after 1992 and were  
25 the result of the backlash Plaintiff was subjected to,

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1 throughout the years from 1992 to 1997. The Navy had  
2 immediately began a series of retaliatory acts, such as delaying  
3 her benefits, as soon as she filed her 1992 complaint. Because  
4 Plaintiff was in need of funds during this period she had to file  
5 for several benefits, which the Navy immediately obstructed.  
6 Due to administrative EEO filing requirements, Plaintiff was  
7 forced to file several complaints during different time periods,  
8 which made it appear she was filing many complaints. But these  
9 complaints occurred because of and were related to her first 1992  
10 complaint. Plaintiff agrees all her Navy complaints, whether  
11 related or not, should have been settled at the same time for  
12 the benefit of the Plaintiff and the Navy. The reason the  
13 complaints did not end at once, was that Plaintiff's attorneys  
14 at the time and the government attorney at the time, did not  
15 negotiate enough, to settle all complaints at once. When an  
16 Entry of Judgement was offered by the Navy to settle just the  
17 first 1992 complaint, with attorney fees included in that offer  
18 and the government attorney provided only a very short time  
19 frame to accept or reject the offer, Plaintiff's attorneys  
20 advised her to accept that offer immediately, stating that if  
21 she accepted their other offer that included two of her pending  
22 retaliation complaints then before Judge Petal, she would  
23 forfeit her workers compensation benefits.

24 When Plaintiff's complaints did not settle, plaintiff's  
25 attorneys began to represent her on the two District Court

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1 complaints left pending after the 1992 complaint settled.

2 Although Plaintiff provided her attorneys declarations and other  
3 evidence that she had been treated differently in the retaliation  
4 complaints, Judge Patel's dismissal stated Plaintiff had not  
5 provided that same critical evidence. When Plaintiff personally  
6 informed Judge Patel the evidence had been presented to her  
7 attorneys and that Plaintiff had desired to settle all her  
8 complaints at once, she stated, "that sounds like malpractice."

9 The next event that took place after that was Judge Patel  
10 issuing her 1999 Order that discouraged further filing by  
11 Plaintiff.

12 Plaintiff also notes it was Judge D. Lowell Jensen who entered  
13 Judgement in favor of Plaintiff, for complaint No. C-97-00534  
14 DLJ.

15 Judge Patel later related and dismissed the other actions.  
16 Plaintiff did inform both her own attorneys and the government  
17 attorney during the period of the pending settlement talk, that  
18 there was a new blacklisting issue unrelated to her pending  
19 retaliation complaint, that she wished to include in the  
20 negotiations. She was informed by her attorneys that as her  
21 complaint was just at the informal stage, she was required to go  
22 through the administrative process and that they would represent  
23 her if she later located the actual blacklist, which she did not  
24 have at the time. Plaintiff also verbally informed the  
25 government attorney of the new unrelated blacklisting complaint

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1 in an attempt to conclude all her complaints. She was informed  
2 that the Navy was not interested in settling any blacklisting  
3 complaint. Plaintiff was left with no option but to pursue the  
4 years of lengthy administrative Navy EEO investigations and then  
5 further years of EEOC investigation.

6 When Plaintiff first filed this District Court complaint, she  
7 filed a document in compliance with Judge Patel's 1999 Order  
8 entitled "Request for Oakland District Court Filing Location, Due  
9 to Severe Disability, and Request for Leave of Court to File this  
10 Complaint."

11 Plaintiff requested Leave of Court to file this complaint, as  
12 ordered. This blacklisting complaint covers different time  
13 periods from those heard by Judge Patel. Throughout the many  
14 years this blacklisting complaint was investigated by various  
15 Navy and then EEOC levels, Plaintiff has clarified her complaint  
16 to a basic definition. Plaintiff filing an EEO complaint and  
17 being blacklisted on Navy lists, is the retaliation she  
18 suffered. Not being promoted is the result of her being  
19 blacklisted. The fact Plaintiff has a disability is irrelevant  
20 in this complaint. The issue of blacklisting is not a part of  
21 previously filed complaints and should be addressed by this  
22 Court, since it has not been previously heard.

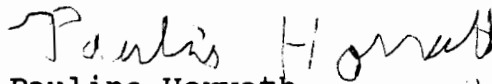
23 (3) The Third Argument Defendant relies on in his Motion to  
24 Dismiss is that because EEOC dismissed Plaintiff's blacklisting  
25 complaint as untimely, this Court should adopt the decision.

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1 When Plaintiff first filed this complaint, she included her  
2 argument to EEOC's Decision that she was untimely.  
3 In that document, which was not addressed by EEOC, other than to  
4 provide Plaintiff the Right to Sue Letter, to file in District  
5 Court, she addresses several reasons why she was timely,  
6 including that EEOC's Decision was incorrectly based on only one  
7 promotion she applied for, when in fact she had applied for  
8 several promotions, in which those supervisors had no knowledge  
9 of Plaintiff's 1986 complaint. EEOC's basis for dismissal  
10 incorrectly involved solely one supervisor whom Plaintiff  
11 applied to for promotion, having had knowledge of her 1986  
12 complaint.

13 For all of the above reasons, Plaintiff requests the Court  
14 dismiss the Defendant's Motion.

15 Respectfully Submitted,

16   
17 Pauline Horvath, 2-8-08  
18 Plaintiff

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CERTIFICATE OF SERVICE

I, THE UNDERSIGNED, HEREBY CERTIFY THAT I AM A CITIZEN OF THE UNITED STATES, OVER THE AGE OF EIGHTEEN YEARS, AND NOT A PARTY TO THE WITHIN ACTION. MY ADDRESS IS: 3544 CUSTER STREET  
Oakland, CA 94601

I SERVED A COPY OF THE ENCLOSED DOCUMENTS AND ANY ATTACHMENTS DESCRIBED AS:

1. PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS C 07-04952 JSW

EITHER IN PERSON OR BY CERTIFIED MAIL, ON THE PERSONS LISTED BELOW.

<u>NAME</u>	<u>ADDRESS</u>	<u>DATE SERVED</u>
MICHEL THOMAS PYLE U S ATTORNEY'S OFFICE	U.S. DISTRICT COURT 450 GOLDEN GATE AVENUE BOX 36055 SAN FRANCISCO, CA 94102	2-8-08
CLERK OF THE COURT U.S. DISTRICT COURT NORTHERN DISTRICT OF	U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 450 GOLDEN GATE AVENUE SAN FRANCISCO, CA 94102	2-8-08

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS DECLARATION WAS EXECUTED ON February 8, 2008 AT OAKLAND, CALIFORNIA

  
SIGNATURE